Dispatch Printing Company *and* Linda D. Baise

Teamsters Local Union 473, affiliated with the International Brotherhood of Teamsters, AFL–CIO[1] *and* Linda D. Baise. Cases 9–CA–27129, 9–CA–27509, 9–CB–7509, 9–CB–7629

January 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The questions presented in this case are: whether the Respondent Union discriminated against employees Linda Baise, Della Moore, and Brenda Schreckengost on the basis of their sex, in violation of Section 8(b)(2) and (1)(A) of the Act, by failing to accord them certain employment priority rights and causing the Respondent Employer to lay them off; and whether the Respondent Employer violated Section 8(a)(3) and (1) by acceding to the Respondent Union's allegedly discriminatory actions.[2] The judge recommended dismissal of the complaint in its entirety. The General Counsel's exceptions urge reversal of the judge. The Respondents' separate cross-exceptions seek adoption of the judge's recommended dismissal Order, but they allege that there are numerous errors, omissions, and inaccuracies in the judge's decision.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions, to the extent consistent with the discussion set forth below,[4] and to adopt the recommended Order.

The Respondent Employer publishes the *Columbus Dispatch* newspaper. The Respondent Union represents the Employer's mailroom employees, who receive papers off the presses, insert preprinted advertising material, and prepare bundles of papers for loading into trucks. The allegations in this case relate to the Union's administration of an employment preference system inherited from the International Typographical Union Columbus Mailers Union No. 103 (Local 103), which the Respondent Union supplanted as mailroom unit representative in a late 1984 Board election.

During Local 103's tenure, mailroom unit employees were covered by a single collective-bargaining agreement but were divided into three chapels. Those employees who worked on the *Columbus Dispatch* were in the Dispatch Chapel, those working on the *Citizen Journal* (which the Employer printed until December 1985) were in the Citizen Journal Chapel, and substitute journeymen working on either paper were in the Secretary's chapel.

Many of the benefits of mailroom employees represented by Local 103 were determined by reference to overall employment seniority with the Employer, but the selection of vacation dates, eligibility for overtime, and order of layoffs were based on an historical, narrower, ITU seniority concept known as priority. Priority is defined as continuous seniority within a job classification and within a chapel. Consequently, the general priority rule has been that if an employee changed job classifications or chapels, he or she went to the bottom of the priority list for the new classification/chapel.

Priority rights were infrequently mentioned in the series of collective-bargaining agreements between the Employer and Local 103 and between the Employer and the Respondent Union. Priority concepts are set forth in the ITU's Book of Laws, which specifically covered only the classifications of journeymen, apprentices, and trainees. Local unions were free to make local laws governing priority as long as they did not conflict with the ITU's laws. In 1968, the ITU changed its laws to permit apprentices who advanced to journeyman status in the same chapel to retain priority credit for time served as an apprentice. The rule change was not applied retroactively to benefit any current journeyman for past apprentice experience.

Until 1982 contract negotiations between the Employer and Local 103, unit employees worked in the classifications of journeymen mailers, journeymen substitutes, apprentices, permit workers, and Storing employees. Journeymen substitutes were part-time journeymen. Apprentices automatically became journeymen after 4 years. Permit workers were part-time employees who generally held other full-time jobs and primarily worked for the Employer on weekends. Storing employees had worked for W.A. Storing Company and were hired as a group in 1979 to supplement the permit worker group. Of the 20 Storing employees hired, 17 were women, including alleged discriminatees Baise, Moore, and Schreckengost. All but one of the other unit employees at that time were men.

[1] The name of the Respondent Union has been changed to reflect the new official name of the International Union.

[2] On April 1, 1991, Administrative Law Judge Thomas A. Ricci issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent Employer and the Respondent Union each filed cross-exceptions, supporting briefs, and answering briefs to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[3] We deny the Respondent Employer's motion to strike the General Counsel's exceptions.

The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] Because the judge omitted relevant evidence from his opinion, we find it necessary to set forth a full explanation of the facts and analysis relevant to the disposition of the issues presented.

For economic reasons, the 1982–1985 contract between the Employer and Local 103 abolished the apprentice and Storing employee classification and created a utility worker classification. Unlike apprentices, utility workers could perform only preprint insertion work and would not automatically be promoted to journeymen status. Local 103 compiled a list, by date of initial hire, of all permit workers and Storing employees. They were given the option of working as utility workers or permit workers. Twenty employees chose to become utility workers. In terms of priority, the top 8 were men, the next 11 were women, and the last one was a man. Baise, Moore, and Schreckengost were 9th, 10th, and 11th on the list.

The new contract also required that the Employer retain at least 81 journeymen if it wished to employ utility workers. Furthermore, it granted a lifetime job guarantee to the presently employed journeymen. These employees were listed by name at the back of the agreement.

In September 1983, the first five utility workers on the priority list were upgraded to journeymen substitutes. The three alleged discriminatees rose to the top three spots on the utility worker priority list, while the upgraded employees were placed at the bottom of the journeymen substitute priority list and assigned new initial priority dates in accord with the ITU general rule. Also in 1983, employee Richard Swickard moved directly from utility worker to journeyman. He was placed at the bottom of the journeymen priority list.

As previously indicated, ITU's Book of Laws did not specifically cover the utility worker classification. Accordingly, Local 103 was free to amend its priority rules to permit a promoted employee to retain credit on the new classification seniority list for past service as a utility worker. In November 1983, Local 103's membership voted on member Don Barnes' proposal of such an amendment. The proposal was defeated by a 26–24 vote.

When the Respondent Union succeeded Local 103 as the representative of the Employer's mailroom employees, it retained the practice of chapels and priority.[5] The Employer periodically prepared priority lists for the Union from data supplied by the Union. The Union in return gave the Employer a copy of the finished lists. The 1985–1988 collective-bargaining agreement between the Union and the Employer retained the predecessor's lifetime guarantee for previously named journeymen and added a more limited term-of-contract job guarantee for eight journeymen hired during the previous contract term. The 1985–1988 agreement also retained the requirement that the Employer have at least 81 journeymen positions in order to employ utility workers.

The *Citizen Journal* ceased publication in December 1985. The journeymen who had worked in the chapel which printed that paper laterally transferred to the *Columbus Dispatch*. They were placed at the bottom of the priority list because they had changed chapels, but those who had lifetime job guarantees retained them. In 1988, the Employer and the Union negotiated the current contract, which expires in 1992. Section 16 of the contract states that layoffs ''will occur in reverse order of priority.'' Section 27 retains the lifetime job guarantees and renews the contract job guarantees for previously named employees.

In November 1989, 3 journeymen retired, dropping the number of journeymen to 78. Inasmuch as the Employer wished to continue to employ utility workers, it had to have at least 81 journeymen. Accordingly, it upgraded Baise, Moore, and Schreckengost, the top three employees on the utility worker priority list. The Union assigned them to the last three positions on the journeymen priority list, giving no credit for their utility worker experience.

In March 1990, the Employer moved to a new facility with state-of-the-art machinery. New plant production efficiencies substantially reduced the number of unit employees needed. Consequently, the Employer laid off all employees, including journeymen Baise, Moore, and Schreckengost, who did not have either lifetime or term-of-contract job guarantees. The Union filed a grievance on behalf of the 3 women employees, claiming that the Employer was obligated to maintain a level of 81 journeymen. The grievance has been pursued through to arbitration. At the time of the hearing, the Employer employed 74 journeymen employees. The alleged discriminatees have elected to continue employment with the Employer as journeymen substitutes, working one or two shifts a week.

The General Counsel contends that the Respondents unlawfully discriminated against the three women employees when they failed to accord them full chapel seniority, including credit for their 1983–1989 employment as utility workers, which would allegedly have prevented their layoff in March 1990. According to the General Counsel, the Respondents have no rational basis for treating utility worker priority differently from the undisputed ITU practice of permitting priority credit for apprentices advancing to journeymen status within the same chapel. Furthermore, the General Counsel contends that he has proved specific sexual discriminatory intent by the Respondent Union's offi-

[5] Don Barnes became the Union's chief steward. According to the testimony of Baise, Moore, and Schreckengost, Steward Barnes gave assurances on several occasions to them and to other utility workers that they would retain chapel seniority credit if they advanced to journeymen positions within the Dispatch Chapel. The judge specifically discredited Baise's testimony on this matter because he could not believe that Barnes would make such statements after his proposal for a Local 103 bylaw amendment to that effect had been defeated.

cials based on a judge's findings in a prior Board proceeding[6] and testimony in this case about a series of allegedly misleading statements about utility workers' priority.

We find that the General Counsel has failed to prove the complaint's 8(b)(2) and (1)(A) and 8(a)(3) and (1) allegations. Initially, we find that priority rights had no actual bearing on the layoff of Baise, Moore, and Schreckengost in March 1990. The Employer laid off all active employees other than unit journeymen whose jobs were contractually guaranteed. We find no merit in the General Counsel's argument that the contract's general layoff-by-seniority provision modified or superceded the clear and unequivocal intent of the same contract's facially nondiscriminatory guarantee of lifetime or term-of-contract jobs for named journeymen. Because of such guarantees, the three recently upgraded female journeymen would have been laid off even if they had been credited with priority for service as utility workers.

Apart from the layoff issue, however, there remains the question whether the failure to assign full chapel priority rights to the three women journeymen violated the Act. Contrary to the contention of the General Counsel, there is insufficient evidence of specific discriminatory intent by officials of either Respondent. In this record, there are no expressions of animus against female employees generally or the three alleged discriminatees in particular. Furthermore, it is unreasonable to suppose that Union Steward Barnes, the proponent of the defeated 1983 amendment on retention of utility worker priority, became the chief protagonist in misleading and discriminating against Baise, Moore, and Schreckengost.[7] With respect to the prior case, the background evidence in that case relates to events occurring 2 years before those in the instant case, and those prior events did not concern the priority system. In these circumstances, this evidence, by itself, does not warrant an inference of gender discrimination in the instant case.

Finally, we find that the General Counsel has failed to prove that the failure to give the alleged discriminatees priority credit for utility worker service was inconsistent with past practice. On the contrary, we find that the Respondent Union's endtailing of these women on the journeymen priority list was in accord with union representatives' views and practice since creation of the utility worker classification in 1982. The only similarly situated employee, male utility worker Swickard, received no priority credit for utility worker service upon his promotion to journeyman status in 1983. Other utility workers upgraded to journeymen substitute status in September of that same year were also endtailed to the priority list for their new classification. In apparent reaction to this situation, Barnes proposed a bylaw amendment to give utility workers the right to retain priority credit as journeymen. There is no support for the General Counsel's view that this proposal represented an attempt merely to codify existing practice. The only reasonable interpretation of the membership vote against Barnes' amendment is that a Local 103 majority had endorsed the practice of treating the utility worker classification differently from the abolished apprentice classification with respect to the retention of priority.

Based on the foregoing, we conclude that the General Counsel has failed to prove that the Respondent Union violated Section 8(b)(2) and (1)(A) by its failure to give Baise, Moore, and Schreckengost priority credit in the journeymen classification for past service as utility workers. We further conclude that the Respondent Employer did not violate Section 8(a)(3) and (1) by laying off those employees or by acceding to the administration of the Union's priority system.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Michael J. Rybicki, Esq. and *Sandra P. Zemm, Esq. (Sayfarth, Shaw, Fairweather, and Geraldson)*, of Chicago, Illinois, for the Employer Respondent.

Eric Taylor, Esq., for the General Counsel.

Susannah Muskovitz, Esq., of Cleveland, Ohio, for the Union Respondent.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. A hearing in this proceeding was held on October 2 and 3, 1990, in Columbus, Ohio, upon complaint of the General Counsel against two Respondents, Dispatch Printing Company, as an Employer, and Teamsters Local Union 473, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, as a Union. The complaint issued on June 29, 1990, based upon charges filed by Linda Baise, an individual, on December 28, 1989 (Cases 9–CA–27129 and 9–CB–7509) and on May 9, 1990 (Cases 9–CA–27509 and 9–CB–7629). The issue raised by the complaint is simply whether it is true that the two Respondents contrived to alter the employee status of three persons, Linda Baise, Della Moore, and Brenda Schreckengost,

[6] *Teamsters Local 473 (Dispatch Printing)*, JD–122–89. The judge found that the Union violated Sec. 8(b)(1)(A) in 1988 by its distribution of a signing bonus to certain journeymen without letting utility workers (male and female) and other journeymen (male) have a share. Based on remarks by union officials, the judge found that hostility to the women utility workers played a part, along with motives of greed and self-interest, in the distribution action. The Board adopted the judge's decision in the absence of exceptions.

[7] As previously stated, we affirm the judge's credibility findings, specifically including the rationale for discrediting Baise's testimony about statements made by Barnes. Furthermore, we find that this rationale applies with equal force in discrediting similar testimony by Moore and Schreckengost.

because they are women. Briefs were filed after the close of the hearing by all parties.

On the entire record and from my observation of the witnesses I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Dispatch Printing Company, a corporation with a place of business in Columbus, Ohio, is engaged in the publication, circulation, and distribution of the Columbus Dispatch, a daily newspaper, in the Columbus, Ohio area. During the 12 months preceding issuance of the complaint, in the course of this business, that Company derived gross revenues in excess of $200,000, held membership in and subscribed to various interstate news services, including Associated Press, published various nationally syndicated features, and advertised various nationally sold products. During the same period it purchased and received at its Columbus, Ohio facility products, goods, and materials valued in excess $5000 directly from points outside the State. I find that the Respondent Employer is an employer within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that Teamsters Local Union No. 473, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Local 473 of the Teamsters has been the bargaining agent of the employees of Dispatch Printing Company since about 1985. Before that time the bargaining agent had been the ITU. There have been successive collective-bargaining contracts covering all the employees throughout those years. As in all union contracts there have always been seniority provisions, and relative employment rights enjoyed under that provision.

There has also been, among these unionized employees, a system called ''priority.'' As best I can understand this extended and double talk record of testimony by disagreeing witnesses, ''priority'' has for a long time given certain classes of employees more seniority or transfer rights, in their jobs than others have. But, unlike ''seniority'' rights, which also exist in this group, the priority concept does not appear in the contracts which the Unions have made with the company. It is the Union, and only the Union, which decides who has and who does not enjoy ''priority.'' In short, there are no documents, no kinds of written records as to how priority applies to this or that job. All the record contains are conflicting assertions by the various witnesses as to who has such rights and who does not.

This case arose when in November 1989 the Company decided to move its entire operations to another location in the same city. The move having been occasioned by change in the volume of his business, the Company needed a lesser compliment of employees, and asked the Union to list all of them in accordance with the employment prerogatives they enjoy. The Union did that. It listed 81 journeymen, in order of seniority. They all became regular full-time employees. The Union also listed about 30 more employees, in lesser categories, all of whom were not to be given regular jobs but who continued to work from 3 to 5 days a week. It is the Union's position, of course, that the employees were listed according to both the contractual ''seniority'' rights and whatever ''priority'' rights they enjoyed under the Union's special system. The Company accepted the Union's listing, as it always did. The journeymen were put to work and the remainder of the listed employees continued to work on schedules that sometimes were a full 5 days a week.

Many of the employees named in the subordinate list were women, most of them having previously occupied less skilled positions—called permit workers, utility workers, journeymen subs, etc. The first three names in that list were ladies—Baise, Moore, and Schreckengost. So are the five names immediately following, as well as a great number of the rest, all ladies.

On March 22, 1990, the Company decided to reduce its payroll substantially. Consistent with the agreement with the Union that it would continue 81 regular journeymen, it retained the 81 journeymen who had been long employed by it. It sent a letter to the remaining employees that gave them a choice either to leave the Company or continue to work on a part-time bases as needed.

Despite its multiple paragraphs and phrases, the complaint in reality makes one and only one allegation of illegal conduct by the Union. And it is that the Union placed these three ladies—Baise, Moore and Schreckengost—below the listed 81 journeymen, and thereby gave them a less desirable status as employees—''because of considerations based on sex.'' Absent affirmative evidence that sex in fact motivated the Union in preparing that list, the General Counsel has not proved the case in support of the complaint he wrote. The complaint also uses other descriptive words to explain the Union's intent in so classifying these three particular women. It says the Union's action was ''unfair, arbitrary, invidious and a breach of the fiduciary duty owed to the employees.'' These are no more than derogatory words aimed at repeating what in essence is an offense to civilization, a prejudice against women as such, or what an antifeminist attitude really amounts to. None of the language changes the plain and the simple question of the case—can it be said that the Union in fact hurt these three women because they are women?

I shall recommend dismissal of the complaint because there is no evidence—not a word, oral or written—indicating such sex animus on the part of the Respondent Union. The Employer—Dispatch Printing Company—is also named as a Respondent because it accepted the Union's listing which put the 3 women below the 81 journeymen. It has been an old practice between this Company and the Union to have the Union keep records of which employees enjoy ''priority'' rights, and then in what relative position they therefore should be listed. If there is nothing to prove the basic contention that the Union was thinking of sex when it made the list, how can it said the Company, merely by accepting the list, was therefor also guilty of sex discrimination? The complaint must be dismissed also with respect to the Company Respondent.

If there is any merit in the argument that because these three persons are women it follows that the Union tried to

hurt them for that reason,[1] it is more than offset by other evidence in the record which shows that the Union always accorded them the same rights as all other members. They filed a grievance against the Company in the fall of 1989, stating some kind of wrongdoing by the Employer. The Union's agents processed it, and only after discussion with management was the grievance dropped. But far more revealing is another grievance which the three ladies filed about the very layoff notices of November 22, 1990, which gave rise to this proceeding. The Union has pushed that grievance, claiming the three ladies must be restored to regular, full-time employment, with full backpay for time lost. Unable to convince management, the Union carried the grievance to arbitration, as its contract with the Company provides. That entire matter is now awaiting arbitration, and if the Union wins, the Charging Parties will be restored to regular employment. I deam such assistance for them by the Union's positive evidence that as an organization this Union does not harbor a prejudice against women.[2]

Perhaps there is another reason for dismissing this complaint. The entire matter really belongs to the Equal Employment Opportunity Commission (EEOC).

At the hearing the General Counsel shifted position and offered to prove that the Union ignored past practice and denied to these three ladies a certain seniority, or priority right they had earned and which, had it been considered, would have placed them higher on the listing the Union gave to the Company in 1989. These women, as well as a great number of others, had long worked in a category called ''utility workers.'' This job requires less skill than the journeymen classification. It was their contention, as each testified in conclusionary language, that as utility workers they accumulated priority rights which they retained when being considered for promotion to journeyman status. The union agents, as witnesses, testified that any priority earned as a utility worker never carried over into a higher classification, that when the employees were listed as journeymen any priority any of them had earned as utility workers played no part in the decision making.

Viewing the case in this light one asks did the Union act ''arbitrarily,'' ''invidiously,'' in applying its past practice? Again the burden is upon the General Counsel to prove the merits of the complaint by preponderance of the affirmative evidence of the record as a whole. In the light of all the relevant evidence, I think the General Counsel has failed to successfully carry that burden and therefore find that even on this alternative ground the complaint must be dismissed.

The three ladies in question say they earned priority rights during the long period they worked as utility workers, starting in 1982. By this they meant rights that carried over also into other categories they might one day achieve, such as journeyman status.

At a meeting of the Union Local in 1983 Donald Barnes, the union agent now accused of denying the charging parties their ''utility'' earned ''priority,'' introduced a motion to alter the Union's internal priority rule and grant such rights to utility workers. He must have favored the idea. The motion was voted down. No such motion was ever made thereafter!

In support of its assertion that the utility workers did not have priority rights into the journeymen classification, the Union relies in part on the fact that none of these women after 1983 made any attempt to have the rules altered by motion within the Union. True, the testimony is conflicting as to whether union agents told utility workers that they had that right. During the hearing both sides were being influenced by their opposing interests, and their testimony after the events are necessarily weak. But that attempt to ''codify'' such a priority in the Union's written regulations is much more revealing. It means, as it must, that absent such a codification of the rules, the rule did not exist within the local. The General Counsel sweeps away the fact none of his witnesses, who now claim they had such rights, ever made any attempt, after 1983, to have the written rules changed. In his brief he calls this defense ''laughable,'' because of ''the really all male membership'' of the Local. The vote on the issue in 1983 was 26 against granting utility workers (mostly females) priority, and 24 in favor. If all the members present were men, as it is indicated, this proves that in this local union there is no pervasive antagonism, or prejudice, against women!

There is a much more revealing reality that greatly weakens the essential basis of this complaint however phrased. The 81 journeymen who are listed in the Union's listing of November 1989 were employees all named in the collective-bargaining contract with the Union and the Company as persons who were granted guarantied lifetime jobs. That contract, received in evidence, was made in 1988 and was in effect during the time of these events. In their direct testimony at the hearing, Baise at one point said her name should have been at number 62. Later she said she should have been listed after Bucci, who appears on the list as number 66. But she was not a convincing witnesses as she tried to explain her contention on the basis of things that had happened years before the current contract came into effect. The other two ladies also spoke ''generally'' of ''priority'' rights having been acquired in earlier years. In sum, the oral testimony about this vague thing and undocumented so-called priority right is a confused mess. In deciding whether the General Counsel has come forth with proof positive of wrongdoing by the Union the best evidence is that which is unquestioned.

Maybe years ago, long before the 1988 contract which precisely named the job guarantied employees, there may have been some shenanigans within the Union as to who should and who should not carry priority rights from one job to another. If the Union is to be found, in this proceeding, to have violated the statute at all, the unfair labor practice must have occurred no more then 6 months before the filing of the charges.

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[1] Long ago the Board found a union guilty by presumption. Its reasoning was that when a union sends out employees from a referral list it automatically follows that it favors its members, because that is what a union exist for. The Supreme Court rejected the entire concept, by saying: ''We cannot assure that a union conducts its operations in violation of law or that the parties to this contract did not intend to adhere to its express language. Yet we would have to make those assumptions to agree with the Board that it is reasonable to infer the union will act discriminatorily.'' *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961).

[2] In his brief the General Counsel calls this grievance and arbitration a ''smoke screen'' to cover the Union's quilt. What this amounts to is an argument that I ignore the facts and rely instead on the General Counsel's understandably motivated statement of opinion. It has long been argued that the negative proves the positive. Does the positive prove the negative here? I think not.

The oral testimony may raise a doubt as to the merits of the Union Respondent's defense. Baise said, at the hearing, that the union steward, Barnes, told her she did have priority. Barnes denied that. Since he was the man who at a regular union meeting had tried to get the Union to agree to give her such right as a utility worker, can I believe her that he nevertheless told her she did have such a right? No, I cannot.

To me the most significant fact, clear because it is proved by documented exhibits and evidence, is that all the employees who were placed above the utility workers, and, according to the three ladies, given discriminatory preference, were named in the current contract as being entitled to lifetime employment, or at least guaranteed jobs for the duration of the contract then in effect. With this, a fact of record, how can I find the Union acted improperly when, in the light of all the past history, it listed the employees the way it did? I think this case fits squarely in a text articulated by the Supreme Court:

> The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. [*Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953).]

The General Counsel having failed to prove by affirmative evidence that the Respondents violated the statute, I shall recommend dismissal of the complaint.

ORDER

It is ordered that the complaint is dismissed in its entirety.